

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

|                     |   |                            |
|---------------------|---|----------------------------|
| EDWARD GIST III     | § |                            |
| v.                  | § | CIVIL ACTION NO. 6:15cv558 |
| JOSEPH HART, ET AL. | § |                            |

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff Edward Gist, an inmate currently confined in the Texas Department of Criminal Justice, Correctional Institutions Division, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Gist was ordered to pay an initial partial filing fee of \$12.71, pursuant to 28 U.S.C. §1915(b). In response, he stated that the Texas prison system did not pay him money or good conduct time for his work and so he had “no disposable earnings.” Gist also alleged that the Consumer Credit Protection Act of 1968 placed restrictions on garnishment, thus prohibiting courts or prison officials from deducting court fees from inmate trust accounts.

The Magistrate Judge rejected these arguments, noting that Gist regularly received deposits to his inmate trust account and that he had a balance of \$210.86 in his account. The Magistrate Judge issued a Report recommending that the lawsuit be dismissed without prejudice for failure to prosecute or to obey an order of the Court. Because the incidents giving rise to the lawsuit began

in November of 2014, the Magistrate Judge also recommended that the statute of limitations be suspended for a period of 60 days following the date of entry of final judgment.

Gist received a copy of the Magistrate Judge's Report on July 28, 2016, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law"). It is accordingly

**ORDERED** that the Report of the Magistrate Judge (docket no. 13) is **ADOPTED** as the opinion of the District Court. It is further

**ORDERED** that the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute or to obey an order of the Court. It is further

**ORDERED** that the statute of limitations on the claims raised in this lawsuit is **SUSPENDED** for a period of 60 days following the date of entry of final judgment in this case. Finally, it is

**ORDERED** that any and all motions which may be pending in this action are hereby **DENIED**.

So **ORDERED** and **SIGNED** this **23** day of **August, 2016**.



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Ron Clark, United States District Judge